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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,635	09/30/2005	Gloria Silva	09163000.110000US	5452
23562 7590 10/29/2009 BAKER & MCKENZIE LLP PATENT DEPARTMENT 2001 ROSS AVENUE SUITE 2300 DALLAS, TX 75201			EXAMINER PRYOR, ALTON NATHANIEL	
			ART UNIT 1616	PAPER NUMBER
			MAIL DATE 10/29/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/551,635

**Applicant(s)**

SILVA, GLORIA

**Examiner**

ALTON N. PRYOR

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's arguments filed 9/18/09 have been fully considered but they are not persuasive. See argument below.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 25-47 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The term "substantially evaporated" appears to be new matter. The term "substantially" does not appear to be used in the instant specification.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeWinter-Scailteur (SPN 5252537;10/12/93) and Carstairs et al. (USPN 5677019; 10/14/97). DeWinter-Scailteur teaches a process for preserving natural flowers

comprising a grid for receiving flowers and several process steps of dehydrating flowers wherein flowers are immersed in solvent, DeWinter—Scailteur teaches an infiltration step wherein flowers are immersed in a bath comprising colorants, solvent and polymer (PEG). See column 1 line 48 – column 4 line 54. DeWinter-Scailteur does not teach the dehydration step comprising alcohol (column 3 lines 1-54). However, Carstairs et al. teaches a process for preserving cut flowers using alcohol. It would have been obvious to one having ordinary skill in the art to modify the invention of DeWinter-Scailteur to include alcohol taught by Ando et al. One would have been motivated to do this in order to promote complete dehydration. With respect to amounts and temperatures one would have been expected to determine the optimum amounts and temperatures. One would have been motivated to do this in order properly dehydrate flowers.

*Response to Applicant's argument*

Applicants argue that DeWinter-Scailteur does not teach a process involving two dehydration steps. The Examiner reiterates that DeWinter-Scailteur teaches more than one drying or dehydration step. See column 2 lines 7-12 and column 3 lines 21-29 where it is taught that natural flowers undergo a dehydration stage involving the exposure of organic solvents to the flowers to make the flowers transparent and colorless and where a dehydration step using molecular sieves followed by an infiltration step is taught. Thus, DeWinter-Scailteur teaches at least two dehydration steps. DeWinter-Scailteur appears to suggest that colorless flowers can be obtained with only two dehydration steps as opposed to the three dehydration steps recited in the instant claims.

The Applicants argue that if one assumes that DeWinter-Scailteur teaches two dehydration steps, it is clear that DeWinter-Scailteur does not teach three dehydration steps as presently claimed. The three dehydration steps in the instant process, as opposed to one or maybe two dehydration steps taught by DeWinter-Scailteur, allow for substantial removal of soluble natural substances, allowing for a better preservation process. In addition, the flowers obtained with the instant process last longer because the soluble natural substances are substantially removed. Applicant points to paragraph 67 of the specification to support this position. The Examiner argues that while it may be true that the instant process including the three dehydration steps may be more economically favorable than the one or may be two dehydration step process disclosed in DeWinter-Scailteur, (Note, the resulting alcohol yielded from the third step of the instant process may be used in the second step of another batch as well as the alcohol yielded from the second step may be used in the first step of another batch), the Applicant does not provide any evidence or showing that the instant process, in comparison to DeWinter-Scailteur's process involving only one dehydration step, would yield longer lasting flowers.

Applicant points out that independent claim 25 recites, ""implementing an evaporation step, the evaporation step comprising the bath mixture being substantially removed from the flowers and the fourth mixture being substantially evaporated in vacuum or by applying an evaporating temperature."" Applicant further argues that in comparison to the instant evaporation step, Carstairs' evaporation step is insignificant resulting from temperature used by Carstairs, i.e. only a few components will evaporate

from Carstairs' aqueous mixture using the temperature disclosed in Carstairs. The Examiner would like to point out that term "substantially" in claim 25 appears to be new matter. The Examiner would also add that instant claims do not recite a numerical temperature limitation. The combination of new matter with no numerical temperature range disclosed for the instant evaporation step allows for Carstairs to be maintained in the 103(a) of record.

The Applicant argues that evaporation and dehydration can not be considered the same. The Examiner argues that while the two terms are not identical, it is important to note that both terms denote the removal of liquid. The Examiner further argues that dehydration can be considered a form of evaporation and the terms are being treated as such in the rejection of record.

Applicant argument that the Examiner failed to make obvious a case for rejection under 35 USC 103(a) because the Examiner not identify a reference for each limitation of claim 1, including selecting and cutting the flowers, at least three dehydration steps and the evaporation step. DeWinter-Scaitleur teaches only one dehydration step as opposed to the three conservative dehydrations recited in instant claims. The Examiner argues that for the instant process it is inherent that an artisan would have to select and cut flowers in order to practice the process. Therefore, DeWinter-Scaitleur process for preserving natural flowers would inherently involve identifying/selecting a flower and then cutting the selected flower prior to preserving the flower. With respect to the dehydration step, DeWinter-Scaitleur teaches more than one drying or dehydration step. See column 2 lines 7-12 and column 3 lines 21-29 where it is taught that natural flowers

undergo a dehydration stage involving the exposure of organic solvents to the flowers to make the flowers transparent and colorless and where a dehydration step using molecular sieves followed by an infiltration step is taught. Thus, DeWinter-Scaitleur teaches at least two dehydration steps. DeWinter-Scaitleur appears to suggest that colorless flowers can be obtained with only two dehydration steps as opposed to the three dehydration steps recited in the instant claims.

Applicant argues that it is impossible in a one-step dehydration process to obtain clear or white flowers. The Examiner argues that DeWinter-Scaitleur teaches that natural flowers undergo a dehydration stage involving the exposure of organic solvents to the flowers in order to make the flowers transparent and colorless (column 3 lines 21-29).

Applicant argues that it would not be obvious to combine Carstairs et al with DeWinter-Scaitleur to include alcohol to promote complete dehydration. Carstairs et al teaches a method of preserving plants' natural color, whereas instant claim 1 removes all natural pigments in order to dye flowers with other colors. The Examiner argues that claims do not recite that all natural pigments are removed by instant process for the purpose of using dye to color flowers. For this reason, the recitation of such a statement in Applicant's response has no patentable significance since the limitation is not in the claims. The purpose for employing Carstairs et al is to show that alcohols are used to facilitate the complete dehydration of flowers (see claims). Since both DeWinter-Scaitleur and Carstairs et al are involve the dehydration of flowers using organic

solvents, it would have been obvious to modify the invention of DeWinter-Scaitleur to include the alcohols taught by Carstairs et al to facilitate flower dehydration.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/  
Primary Examiner, Art Unit 1616